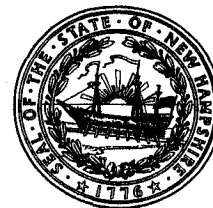




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Paul Gatchell
7 Prescott Road
Epping, NH 03042

Re: 732 Province Road
Strafford, NH 03884

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 06-012**

April 14, 2006

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to Paul Gatchell, pursuant to RSA 485-A and NH Admin. Rule Env-C 604. The Division is proposing that fines totaling \$2,000 be imposed against Paul Gatchell for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division ("the Division"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Paul Gatchell is an individual having a mailing address of 7 Prescott Road, Epping, NH 03042.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 485-A:29-44 authorizes the Department of Environmental Services ("DES") to regulate the subdivision of land and the construction, maintenance, and repair/replacement of individual sewage disposal systems ("septic systems"). Pursuant to rulemaking authority conferred therein, the Commissioner of DES has adopted Env-Ws 1000 to implement this program.
2. Pursuant to RSA 485-A:43, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 485-A:29-44, including any rule adopted thereunder. Pursuant to this section, the Commissioner has adopted Env-C 604 to establish the schedule of fines for such violations.
3. Paul Gatchell is a septic installer licensed by the state of New Hampshire, license #3285. As a licensed septic installer in the State of New Hampshire, Mr. Gatchell is required to know NH Administrative Rules, Env-Ws 1000, et seq.
4. In the summer of 2001 and again in the summer of 2005, Paul Gatchell allegedly replaced a

septic system on property owned by Donald and Susan Patterson. The property is described in Town of Strafford tax maps as Map 27, Lot 3-A (the "Property"). The street address of the Property is 732 Province Road in Strafford, New Hampshire.

5. Env-Ws 1003.10 (i) requires a licensed septic installer who performs a repair or replacement of an existing septic system to submit test pit data and a sketch of the repaired/replaced system to DES.
6. Env-Ws 1003.10(j) (1-8) require the installer of a repaired/replaced septic system to submit a completed informational questionnaire to DES including: the installer's opinion of the reason for failure, the system location, the type of water supply, the number of bedrooms in the residence served by the system, the type of appliances and fixtures by which wastewater is generated, and information concerning the system's age, type and kind.
7. DES has no record of any construction authorization for a new system, or any test pit data, system sketch or repair/replacement questionnaire having ever been submitted for the Property.
8. On November 3, 2005, DES received information from the Town of Strafford that a septic system had been replaced on the Property. The Town of Strafford requires local authorization before an existing septic system can be repaired or replaced in kind. Local officials assert that no local authorization was obtained for the alleged repair/replacement of the septic system on the Property in 2001 or 2005.
9. On November 7, 2005, a licensed septic designer who had analyzed the Property for a former owner of the site contacted DES personnel about the work done on the site. The designer stated that he had found no evidence of a leach field existing on the site, and the previous owner of the site stated that the only "system" that had ever existed on the Property was an old dry well.
10. On November 8, 2005, DES personnel contacted the installer, Paul Gatchell. Mr. Gatchell admitted that he had performed a repair/replacement of a system on the Property.
11. During the initial telephone discussion with DES personnel on November 8, 2005, Mr. Gatchell agreed to submit a repair/replacement questionnaire for the work done on the Property, including test pits performed by a licensed septic designer.
12. Mr. Gatchell stated that his employees had in fact found a leach field on the site, and replaced it. He also stated that proper test pits had been dug by a licensed septic designer.
13. DES staff contacted Mr. Gatchell several times by telephone subsequent to November 11, 2005, requesting the required information on the repair/replacement.
14. On January 23, 2006, DES issued a letter to Mr. Gatchell. The letter reiterated concerns about the work done on the Property, and again requested that Mr. Gatchell submit the proper repair/replacement questionnaire describing the work done on the property, and the location and characteristics of the former septic system.
15. Despite numerous telephone conversations, and a letter from DES detailing the administrative rule requirements, and promises by Mr. Gatchell to comply with those rules, the

required repair/replacement questionnaires, and associated data, have not been submitted for work done on the Property by Mr. Gatchell in 2001 and in 2005.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINE

1. Paul Gatchell has violated Env-Ws 1003.10(i) and (j) by performing a repair/replacement of a septic system without filing a repair replacement questionnaire on the Property in 2001, and again in 2005. For this violation, Env-C 604.02(s) specifies for a fine of \$1,000 per system. For the two violations noted, the Division is seeking a fine of \$2,000.

The total fine being sought is \$2,000.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Paul Gatchell is required to respond to this notice. Please respond no later than May 19, 2006 using the enclosed colored form.

1. If you would like to have a hearing, please sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.
2. If you wish to discuss the possibility of settling the case, please sign the appearance, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence, applies in this case:**

1. The violation was a one-time or non-continuing violation, **and** that you did not know about the requirement when the violation occurred, **and** the violation has not continued or

reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** that you did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.nh.gov). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.

COPY

Harry T. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

ec: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Richard de Seve, Compliance Supervisor, DES/SSB
cc: Gretchen Hamel, Legal Unit Administrator
Steve Smith, Building Inspector, Town of Strafford

***** RETURN THIS PAGE ONLY *****

**PAUL GATCHELL IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN May 19, 2006

Please check the appropriate line and fill in the requested information below:

APPEARANCE On behalf of Paul Gatchell:

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Paul Gatchell:

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$2,000 paid to "Treasurer, State of New Hampshire" is enclosed. *

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature _____ Date _____

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:

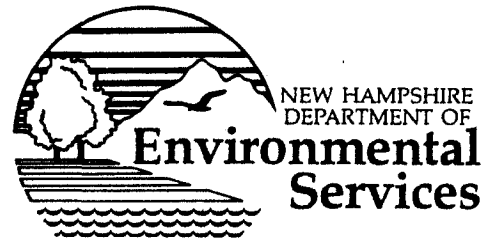
DES Legal Unit

Attn: Michael Sclafani, Legal Assistant

P.O. Box 95

Concord, NH 03302-0095

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

CO-2

2002

Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.